

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA, )  
4 Plaintiff, ) Case No. 2:13-cr-423-JCM-GWF  
5 vs. ) Las Vegas, Nevada  
6 DANIEL JAMES BARNES, ) April 6, 2016  
7 Defendant. ) 9:02 a.m.  
8 ) Day 3

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9 PARTIAL TRANSCRIPT OF PROCEEDINGS  
10 BEFORE THE HONORABLE JAMES C. MAHAN  
11 UNITED STATES DISTRICT COURT JUDGE AND A JURY

12 APPEARANCES:

13 For the Government:

14 ALLISON HERR  
15 CRISTINA SILVA  
16 Assistant U.S. Attorneys  
District of Nevada  
333 Las Vegas Boulevard So.  
Las Vegas, Nevada 89101

17 For the Defendant:

18 LUCAS GAFFNEY  
19 JAMES A. ORONoz  
Oronoz, Ericsson & Gaffney LLC  
1050 Indigo Drive, Suite 120  
Las Vegas, Nevada 89145

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22  
23 Court Reporter: Katherine Eismann, CSR, CRR, RDR

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25 Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

1 (Wednesday, April 6, 2016, 9:02 a.m.)

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3 P R O C E E D I N G S

4 (Jury out.)

5 THE COURT: All right. Thank you. You may be  
6 seated.

7 In session outside the presence of the jury. We  
8 revised the one instruction, but not the -- you got copies of  
9 that this morning; right?

10 MS. SILVA: Yes, Your Honor.

11 MS. HERR: Yes, Your Honor.

12 MR. GAFFNEY: Yes, Your Honor.

13 THE COURT: All right. So, just to finish off with  
14 the jury instructions, does the government request the giving  
15 of any instructions in addition to those the Court has  
16 indicated will be given?

17 MS. SILVA: No, Your Honor.

18 THE COURT: Does the government request the giving of  
19 any instructions in addition to those the Court has indicated  
20 will be given?

21 MS. SILVA: No, Your Honor.

22 THE COURT: All right. And for the defense, does the  
23 defendant request the giving of any instructions in addition to  
24 those the Court has indicated will be given?

25 MR. GAFFNEY: No, Your Honor.

1 THE COURT: Do you object to any of the instructions  
2 the Court has -- I'm -- I may be repeating myself. Let me try  
3 again.

4 Do you request the giving of any instructions in  
5 addition to those the Court has indicated will be given?

6 MR. GAFFNEY: No, Your Honor.

7 THE COURT: Do you object to any of the instructions  
8 the Court has indicated will be given?

9 MR. GAFFNEY: No. I submit it on my earlier  
10 objections.

11 THE COURT: All right. So will the parties stipulate  
12 the jury instructions have been settled in open court?

13 MS. SILVA: Yes, Your Honor.

14 MR. GAFFNEY: Yes, Your Honor.

15 THE COURT: Okay. Now, what about the verdict form?

16 MS. SILVA: Your Honor, I did email a revised verdict  
17 form to your clerk last night.

18 THE COURT: Except it wasn't attached.

19 MS. SILVA: Did the attachment not go through? I  
20 certainly apologize. I did not get an email indicating that --

21 THE COURT: Has Mr. Gaffney seen it?

22 MR. GAFFNEY: I have, Your Honor. And I have already  
23 made my record on --

24 THE COURT: All right. Do you have a copy of it or  
25 have the original that I can give to the jury?

1 MS. SILVA: Your Honor, I apologize. I thought it  
2 had gone through last night. Let me forward it on again this  
3 morning.

4 I want to make sure -- can I talk with your law clerk  
5 and make sure I have the right email address?

6 THE COURT: Sure.

7 MS. SILVA: Thank you.

8 THE COURT: I mean, we got your message, and what it  
9 had was just text, one -- what would you call it? I mean, it  
10 was just like a short text thing, but there was no document.  
11 You know, he tried to open it, and it wouldn't open. There was  
12 nothing there.

13 MS. SILVA: May I approach, Your Honor?

14 THE COURT: Sure. Go over and talk to him.

15 MS. HERR: Now, Mr. Barnes, you had something you  
16 wanted to say?

17 THE DEFENDANT: Well, yeah. For the record, I just  
18 wanted you to know that I felt that my Sixth Amendment right  
19 was violated by not being able to call witnesses to testify on  
20 my behalf.

21 THE COURT: All right. The -- you've got two lawyers  
22 representing you there. Mr. Gaffney -- and I don't mean to  
23 offend you -- but he's fairly new at the game.

24 Now, I say that having -- and I --

25 MR. GAFFNEY: That's okay.

1           THE COURT: -- freely admit I've got 40 years into  
2 this, more than 40. Whatever it is.

3           But Mr. Oronoz, seated right next to you, is one of  
4 the best criminal defense attorneys that I have seen here in  
5 federal court.

6           I don't say that lightly, Mr. Oronoz.

7           MR. ORONOS: Thank you, Your Honor.

8           THE COURT: But unfortunately, the lawyers never hear  
9 that.

10           So he's been overseeing -- he's been working with  
11 Mr. Gaffney. And all I can caution you is, you know, you don't  
12 clean your own teeth. You know, if you've got a toothache, you  
13 don't say, "Here. I will take care of that myself. Let me get  
14 my home drill out and drill it out."

15           You go to a professional. Correct? Is that right?  
16 Correct, sir?

17           THE DEFENDANT: Correct.

18           THE COURT: And so you've been to these lawyers.  
19 These lawyers know what they are doing, and they've tried other  
20 cases. And in particular, Mr. Oronoz has tried a number of  
21 cases in front of me. I'm sure some much to his regret, but  
22 that's the way the cookie crumbles.

23           But you've got excellent attorneys representing you.  
24 And put your faith in their hands and let them handle this  
25 thing. They are professionals.

1 All right? Now --

2 MR. GAFFNEY: Thank you, Judge.

3 MS. SILVA: Thank you, Your Honor.

4 THE COURT: All right. So, I'm going to bring in the  
5 jury then. We will break for just two minutes and line the  
6 jury up, and we will be right in.

7 (Recess 9:12 a.m. Jury instructions and closing arguments  
8 not transcribed. Resumed 11:09 a.m. Jury out.)

9 THE COURT: All right. Thank you. You may be  
10 seated. The attorneys leave a cell number where we can reach  
11 you, and then stay close to the courthouse. All right?

12 MR. GAFFNEY: Judge, I --

13 THE COURT: Thank you. We will be in recess.

14 (Recess, 11:10 a.m. Resumed, 1:25 p.m. Jury out.)

15 THE COURT: All right. Thank you. You may be  
16 seated.

17 All right. I have a note from the jury.

18 "Judge, can we please have clarification regarding  
19 transportation as it pertains to Count Three, element one?"

20 What I'm inclined to do is to bring them in and tell  
21 them that they have to use their knowledge of English and their  
22 common sense in interpreting everything. And that not every  
23 word has some specialized -- not every word in the instructions  
24 has some specialized meaning.

25 Any objection?

1 MR. GAFFNEY: No, Your Honor.

2 MS. HERR: No.

3 MS. SILVA: No, Your Honor.

4 THE COURT: Any other suggestions?

5 MR. GAFFNEY: Or just refer them back to the jury  
6 instructions and the plain meaning.

7 MS. SILVA: Yeah, the ordinary common.

8 THE COURT: All right. I'm sorry. Did you say  
9 something?

10 MS. SILVA: The ordinary common definition of  
11 transportation, Your Honor.

12 THE COURT: Yeah. All right. Tell Mike to bring  
13 them in.

14 LAW CLERK: All right.

15 MR. GAFFNEY: Judge, when we excuse the jury, I have  
16 a very brief issue I'd like to put on the record if possible.

17 THE COURT: Well, we can talk.

18 MR. GAFFNEY: Okay. It should not take more than two  
19 minutes.

20 (Jury in.)

21 THE COURT: All right. Thank you. You may be  
22 seated.

23 Parties stipulate to the presence of the jury and the  
24 alternates?

25 MR. GAFFNEY: Yes, Your Honor.

1 MS. HERR: Yes, Your Honor.

2 THE COURT: Miss Perry, you have been selected as  
3 foreperson; is that correct?

4 FOREPERSON: Yes, Your Honor.

5 THE COURT: All right. I have a note here, "Can we  
6 please have clarification as to transportation as it pertains  
7 to Count Three, element one?"

8 These instructions are all in common English. And  
9 where there's a specialized meaning, then we have given you  
10 that.

11 So let me refer you back to the jury instructions.  
12 And just use your common sense and your knowledge of common  
13 English words to interpret them.

14 I mean, they aren't written in any secret language.  
15 They are just in common English terms. So I will refer you  
16 back to the jury instructions, but also just use your common  
17 sense and your understanding of common English terms.

18 All right? All right. I am going excuse the jury.

19 (Jury out.)

20 THE COURT: All right. Thank you. You may be  
21 seated.

22 Mr. Gaffney -- here is this, David.

23 Do you have something?

24 MR. GAFFNEY: I do. If you recall, before we started  
25 trial, the Court excluded our expert witness. And I just



1 wanted to make a record on what he would have testified to had  
2 he been allowed to testify here.

3 THE COURT: It's a little late for that; isn't it?

4 MR. GAFFNEY: Well, I tried to make a record earlier.  
5 We deferred it until our case in chief, and then it slipped my  
6 mind yesterday. But I just wanted -- just for appellate  
7 purposes, I wanted to make this record.

8 THE COURT: Well, except based on what you are  
9 telling me, I'd say, "Oh, gee, now I'd let him testify."

10 MR. GAFFNEY: Well, no. I understand the Court's --

11 THE COURT: No. Yes.

12 MR. GAFFNEY: Well --

13 THE COURT: Don't say "No." I mean, you tell me,  
14 "He's going to say blah, blah, and blah." And I say, "Well,  
15 gosh. If I would have known that, I would have let him  
16 testify."

17 MR. GAFFNEY: Well, I'm not quarreling with the  
18 Court's ruling.

19 THE COURT: Pardon me?

20 MR. GAFFNEY: I'm not quarreling with Court's ruling.

21 THE COURT: It doesn't matter. But I'm not going to  
22 let you put it on now. And he would have said, you know,  
23 "Peanut butter is made with peanuts and salt and goes well with  
24 grape jelly.

25 "Well, if I would have known that, I would have let

1 him testify."

2 MR. GAFFNEY: Okay.

3 THE COURT: So, I can't -- we can't go back and  
4 reinvent the wheel at this point. Can we?

5 MR. GAFFNEY: No.

6 THE COURT: No. Okay. So stay fairly close and stay  
7 by the phone, and we'll see if we have any more questions of  
8 that sort.

9 MR. GAFFNEY: Okay.

10 THE COURT: We will be in recess.

11 (Recess, 1:47 p.m. Resumed, 2:49 p.m. Jury in.)

12 THE COURT: Parties stipulate to the presence of the  
13 jury and the alternates?

14 MS. SILVA: Yes, Your Honor.

15 MR. GAFFNEY: Yes, Your Honor.

16 THE COURT: All right. Miss Perry, you were selected  
17 as the foreperson; correct?

18 FOREPERSON: Yes, Your Honor.

19 THE COURT: Has the jury reached a verdict?

20 FOREPERSON: Yes, sir. We have.

21 THE COURT: All right. If you will hand it to the  
22 marshal here, and he will hand it up to me.

23 Thank you, sir.

24 All right. I am now going to have the court clerk  
25 read the verdict.

1 COURTROOM ADMINISTRATOR: This is United States  
2 District Court, for the District of Nevada, the Honorable James  
3 C. Mahan preceding.

4 United States of America versus Daniel James Barnes,  
5 Criminal Case No. 2:13-cr-423-JCM-GWF.

6 "Verdict.

7 "We, the jury in the above entitled case, upon our  
8 oaths, do say:

9 "1, Count One: We find Daniel Barnes guilty of the  
10 offense of conspiracy to commit sex trafficking of a child as  
11 charged in Count One of the indictment.

12 "Number 2, Count Two: We find Daniel Barnes guilty  
13 of the offense of sex trafficking of a child as charged in  
14 Count Two of the indictment.

15 "Number 3, Count Three: We find Daniel Barnes guilty  
16 of the offense of transportation of a minor for prostitution as  
17 charged in Count Three of the indictment.

18 "Number 4, Count Four: We find Daniel Barnes guilty  
19 of the offense of conspiracy to commit sexual exploitation of a  
20 child, production of child pornography, as charged in  
21 Count Four of the indictment.

22 "Dated the 6th day of April, 2016. Foreperson, Karen  
23 Perry."

24 THE COURT: All right. Before the verdict is  
25 recorded, does either side wish to have the jury poled?

1 MS. SILVA: No, Your Honor. Thank you.

2 MR. GAFFNEY: Yes, Your Honor. Please.

3 THE COURT: All right. Ladies and gentlemen, the  
4 purpose of this is to ensure that we have a unanimous verdict.

5 So the clerk is going to ask each one of you if that  
6 was your verdict. Do you agree with that verdict. Just answer  
7 yes or no. All right?

8 COURTROOM ADMINISTRATOR: Juror No. 1, is this your  
9 true verdict?

10 JUROR NO. 1: Yes.

11 COURTROOM ADMINISTRATOR: Juror No. 2, is this your  
12 true verdict?

13 JUROR NO. 2: Yes.

14 COURTROOM ADMINISTRATOR: Juror No. 3, is this your  
15 true verdict?

16 JUROR NO. 3: Yes.

17 COURTROOM ADMINISTRATOR: Juror No. 4, is this your  
18 true verdict?

19 JUROR NO. 4: Yes.

20 COURTROOM ADMINISTRATOR: Juror No. 5, is this your  
21 true verdict?

22 JUROR NO. 5: Yes.

23 COURTROOM ADMINISTRATOR: Juror No. 6, is this your  
24 true verdict?

25 JUROR NO. 6: Yes.

1           COURTROOM ADMINISTRATOR: Juror No. 7, is this your  
2 true verdict?

3           JUROR NO. 7: Yes.

4           COURTROOM ADMINISTRATOR: Juror No. 8, is this your  
5 true verdict?

6           JUROR NO. 8: Yes.

7           COURTROOM ADMINISTRATOR: Juror No. 9, is this your  
8 true verdict?

9           JUROR NO. 9: Yes.

10          COURTROOM ADMINISTRATOR: Juror No. 10, is this your  
11 true verdict?

12          JUROR NO. 10: Yes.

13          COURTROOM ADMINISTRATOR: Juror No. 11, is this your  
14 true verdict?

15          JUROR NO. 11: Yes.

16          COURTROOM ADMINISTRATOR: And Juror No. 12, is this  
17 your true verdict?

18          JUROR NO. 12: Yes.

19          THE COURT: All right. The court clerk may record  
20 the verdict in the minutes of the Court.

21                I would like to thank the jury for your service. I'm  
22 going to excuse you now. If you would wait for me in the jury  
23 room, if you would, I always like to talk to the jury  
24 afterwards to find out if there's anything we can do better and  
25 get your impressions of the case.

1                   So, if you would, Mike. Show them out, please.

2                   (Jury out.)

3                   THE COURT: Thank you. You may be seated.

4                   All right. The court clerk is directed to prepare an  
5 appropriate judgment of conviction in accordance with the  
6 jury's verdict.

7                   Give us -- Mr. Clerk, give us a sentencing date,  
8 please, sir.

9                   COURTROOM ADMINISTRATOR: The imposition of sentence  
10 of Daniel Barnes is set for Wednesday, July 6, 2016, at  
11 10:00 a.m.

12                  THE COURT: Wednesday, July 6 at 10:00 a.m.

13                  Anything else to come before the Court?

14                  MS. SILVA: No, Your Honor. Thank you.

15                  MR. GAFFNEY: No, Your Honor.

16                  THE COURT: All right. Thank you. Then we will be  
17 in recess.

18                  (Recess, 2:54 p.m.)

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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: April 15, 2016.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR